

INCENTIVES FOR DIRECT INVESTMENTS IN SERBIA

The Republic of Serbia continues the incentives trend by issuing a new incentives programme for green-field and brown-field projects in Serbia in 2015, based on the Regulation on Terms and Conditions for Attracting Direct Investment ("Official Gazette of RS", No. 28/2015) which entered into force on 21 March 2015 (hereinafter: "Regulation"). It is interesting that the Regulation now explicitly recognises as investment the costs of purchase of the assets of a company that ceased to operate or would have ceased to operate, under market conditions from the third parties (Art 3.5 of the Regulation). This means that a potential asset deal would be recognised as an eligible investment costs under this Regulation.



The level of funds that may be awarded is determined in relation to the **eligible investment costs**, defined as:

- investments in tangible and intangible assets (please note that the current Regulation provides for a more precise definition of such investments than earlier, as well as the methods of proving and verifying investments); or
- costs of gross salaries for new jobs in a two-year period following implementation of the investment project. (Art 5.1 and Art 3 of the Regulation)

These provisions are slightly different than those relating to year 2014.

The Regulation provides for the following limits of the type and level of funds that may be awarded:

A) for eligible investment costs

- of up to 50 million EUR, the limit is set at up to 50% of such costs;
- for a part of eligible investment costs of between 50 and 100 million EUR - the limit is set at up to 25% of such costs;
- for a part of eligible investment costs exceeding 100 million EUR - the limit is set at up to 17% of such costs (Art 6 of the Regulation);
- for medium-sized companies (50-250 persons employed, annual turnover is less than 50 million EUR or total balance sheet is less than 43 million EUR in RSD counter-value) the limit is set at up to 60% of the eligible investment costs;
- for small-sized companies (less than 50 persons employed, annual turnover and/or total balance sheet is less than 10 million EUR in RSD counter-value) the limit is set at up to 70% of the eligible investment costs.

B) for eligible costs of gross salaries for new jobs

- 20% of the eligible costs of 2-year gross salaries, max 3.000 EUR per new job created in the first group of local governments by the level of development;
- 25% of the eligible costs of 2-year gross salaries, max 4.000 EUR per new job created in the second group of local governments by the level of development;
- 30% of the eligible costs of 2-year gross salaries, max 5.000 EUR per new job created in the third group of local governments by the level of development;
- 35% of the eligible costs of 2-year gross salaries, max 6.000 EUR per new job created in the fourth group of local governments by the level of development;
- 40% of the eligible costs of 2-year gross salaries, max 7.000 EUR per new job created in devastated regions. (Art 13 of the Regulation)

These incentives may be increased: (i) depending on the level of development of local governments, an increase may be granted of respectively 10%, 15%, 20%, 25%, 30% of the amount of the eligible costs in fixed assets, (ii) in labour intensive projects where no less than 200 new jobs are created, an increase may be granted of 10% of the amount of eligible 2-year gross salaries costs; (iii) in labour intensive projects where no less than 500 new jobs are created, an increase may be granted of 15% of the amount of eligible 2-year gross salaries costs; (iv) in labour intensive projects where no less than 1000 new jobs are created, an increase may be granted of 20% of the amount of eligible 2-year gross salaries costs. (Art 14 and 15 of the Regulation)

The Beneficiary of funds is still obliged to ensure a participation of no less than 25% of eligible costs from its own resources. (Art 7 of the Regulation)

The terms and conditions to be fulfilled by the Investors for investments, for which funds can be awarded, are slightly stricter than earlier, and depend on the level to which local governments are developed. Thus the incentives may be awarded for:

- investments in the manufacturing sector with a minimum 250.000 euro of eligible investment costs, securing the creation of no less than 30 new jobs for the fourth group of local governments by the level of development and devastated regions;
- investments in the manufacturing sector with a minimum 500.000 euro of eligible investment costs, securing the creation of no less than 40 new jobs for the third group of local governments by the level of development;
- investments in the manufacturing sector with a minimum 1.000.000 euro of eligible investment costs, securing the creation of no less than 50 and 70 new jobs respectively for the second and first group of local governments by the level of development;

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- investments in the service sector, which may be subject to international trade, with a minimum value of 150.000 euro, securing the creation of no less than 20 new jobs. (Art 9 of the Regulation)

Furthermore, the investment must be maintained on the same territory for at least five years after the project's implementation (or at least three years for small- and medium-sized companies), and the accrued number of employees of the Beneficiary must not decrease after the investment project's implementation for a period of five years (three years in the case of small- and medium-sized companies). (Article 10 of the Regulation)

Please note that the salaries paid to employees must be at least 20% higher than the minimum wage in the Republic of Serbia as defined for the month in which the salary is paid.

Investment projects in the sector of primary agricultural production, fishing and aquaculture, transportation, hospitality, lotteries, trade, the production of synthetic fibres, coal and steel, tobacco and tobacco products, weapons and ammunition, shipbuilding, airport, sector of energetics, broadband networks and companies in difficulties are **not eligible** to receive funding under this Regulation. (Article 4 of the Regulation)

The procedure of funds awarding shall be carried out in accordance with the public call, published by the Ministry of Economy at the website of the Ministry and SIEPA (Serbian Investment and Export Promotion Agency) <http://www.siepa.gov.rs/sr/>, with the prior approval of the Ministry of Finances <http://www.mfin.gov.rs/>.

Applications for participation in the procedure for awarding of funds are submitted to SIEPA, which checks the fulfilment of formal requirements for awarding funds, and rejects untimely or incomplete applications. SIEPA's decisions may be appealed to the Ministry within 8 days. Subsequently, SIEPA refers the applications, accompanied with its expert analysis of the project, to the Commission for application evaluation (the "Commission"). The Commission comprises 5 state secretaries of the following ministries: Ministry of Economy, Finance, Infrastructure, Trade and Employment. The criteria for awarding the funds are as follows: investor references; the percentage of unemployed persons whose qualifications match investors' activities, *i.e.* beneficiaries of funds in the total number of persons registered with the National Employment Service in the territory of the local government where investment project is implemented; the number *i.e.* percentage of highly qualified workers which are employed due to realization of the investment project; the amount and type of investment; technological level of operations; previous collaboration with suppliers and projected contribution of domestic suppliers; effects of the investment on employees (training of employees and average salary levels); volume of international and overall turnover; financial-market evaluation of the investment project (funding sources, liquidity, profitability, *etc.*); impact of the investment project on the increase in competitiveness and entrance onto new markets; sustainability of investment projects in all business parameters.

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The Commission renders the decision on awarding funds with a ¾ majority. The decision contains the information relevant to drafting an agreement (the amount of the funds awarded, securities, etc.). The mutual rights and obligations pertaining to the awarding of funds are then governed by the Agreement concluded between the Ministry and the Beneficiary.

Unlike the precious Regulation, which did not provide for instalments in distribution of funds, under the present Regulation, disbursement is carried out in three instalments:

1) in relation to the amount of investment in each year of the investment project implementation, in an amount that is proportional to the percentage of the investment in fixed assets as defined by the investment project, or

2) in relation to the number of employees in each year of the investment project implementation, in an amount that is proportional to the percentage of newly employed workers defined in the investment project. (Article 24 of the Regulation)

The Request for payment of awarded funds must be accompanied with relevant documentation evidencing fulfilment of the obligations based on which such payment is requested.

The Regulation provides for a deadline for implementation of the investment project and creation of new jobs of 3 years, commencing on the day of concluding the Agreement on awarding of funds, which may be extended to the maximum of 5 years. (Article 11 of the Regulation)

The Beneficiary of the funds must submit a guarantee of a bank operating on the territory of the Republic of Serbia, unconditional and payable on first demand to the Republic of Serbia, as well as two signed and registered blank promissory notes. (Article 25 of the Regulation)

The Ministry is entitled to collect the same amount of the disbursed funds as well as the legally prescribed default interest on the basis of the bank guarantee and blank promissory notes at any time if it should determine that the Beneficiary does not satisfy the conditions regarding the dynamics of the investment's implementation or other contractual obligations. (Article 25 of the Regulation)

Please note that, in cases of investments of special interest, the applications may be submitted directly to the Ministry, regardless of the public call, whilst observing all other terms and conditions of the Regulation. (Article 17.8 of the Regulation)

It is also worth noting that the present Regulation departs from the earlier rules with regard to the reimbursement of funds invested in infrastructure. However, any applications for reimbursement of funds invested in infrastructure, as well as any concluded agreements on reimbursement of funds invested in infrastructure submitted and concluded by the day this

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Regulation entered into force, shall be dealt with as provided in the earlier Regulations from 2014. (Article 29 of the Regulation)

Finally, it should be noted that, although the Government issues a Regulation on incentives each year, the earlier Regulation dating from 2014 was never implemented, *i.e.* no public calls under the Regulation from 2014 had ever been published. It remains to be seen whether the budget will allow a call to investors to be published before the end of 2015 under the present terms and conditions, or this Regulation will be supplanted by another by-law.

We are available for any further queries and detailed analyses related to incentives in Serbia!

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